

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

JUAN RIVERA, DEBRA LARSON RIVERA

Plaintiffs,

v.

CHARLES REED d/b/a FORT BUCHANAN

BEAUTY SALON, et al

Defendants.

Civil Action No. 09-1160 (GAG)

OPINION AND ORDER

Plaintiffs commenced this action seeking damages for injuries sustained by plaintiff Juan Rivera (“Rivera”) on June 11, 2008, as a result of alleged negligence on behalf of Mark Colletti (“Colletti”), an employee at d/b/a Ft. Buchanan Barber Shop (“Reed”). Plaintiffs bring this action pursuant to Articles 1802 and 1803 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31, §§ 5141-42. Jurisdiction over this claim in this court is invoked pursuant to 28 U.S.C. § 1332 as there is complete diversity of citizenship among the parties and the amount in controversy exceeds the jurisdictional amount of \$75,000.

This matter is currently before the court on co-defendant Reed’s motion for summary judgment. (Docket No. 82.) Plaintiffs timely opposed defendant’s motion for summary judgment (Docket No. 88.) After reviewing the pleadings and pertinent law, the court **DENIES** co-defendant Charles Reed’s motion for summary judgment.

I. _____ Standard of Review

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed.R.Civ.P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). “An issue is

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genuine if ‘it may reasonably be resolved in favor of either party’ at trial, and material if it ‘possess[es] the capacity to sway the outcome of the litigation under the applicable law.’” Iverson v. City of Boston, 452 F.3d 94, 98 (1st Cir. 2006) (alteration in original) (citations omitted). The moving party bears the initial burden of demonstrating the lack of evidence to support the non-moving party’s case. Celotex, 477 U.S. at 325. “The movant must aver an absence of evidence to support the nonmoving party’s case. The burden then shifts to the nonmovant to establish the existence of at least one fact issue which is both genuine and material.” Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 581 (1st Cir. 1994). The nonmoving party must then “set forth specific facts showing that there is a genuine issue for trial.” Fed.R.Civ.P. 56(e). If the court finds that some genuine factual issue remains, the resolution of which could affect the outcome of the case, then the court must deny summary judgment. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When considering a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party (here, the plaintiff) and give that party the benefit of any and all reasonable inferences. Id. at 255. Moreover, at the summary judgment stage, the court does not make credibility determinations or weigh the evidence. Id. Summary judgment may be appropriate, however, if the non-moving party’s case rests merely upon “conclusory allegations, improbable inferences, and unsupported speculation.” Forestier Fradera v. Municipality of Mayaguez, 440 F.3d 17, 21 (1st Cir. 2006) (quoting Benoit v. Technical Mfg. Corp., 331 F.3d 166, 173 (1st Cir. 2003)).

II. Relevant Factual & Procedural Background

On June 11, 2008 co-plaintiff Rivera visited defendant’s business establishment at Ft. Buchanan for a haircut. Employee Mark Colleti was cutting Rivera’s hair on that day. During the haircut, the barber accidentally cut deeply into plaintiff’s right ear. Following the cutting of his ear, plaintiff contends he was subjected to excruciating pain. He further contends that a remark from the barber, in which he stated “I just cut off your ear,” resulted in further exacerbation of plaintiff’s distress during the incident.

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2 Rivera advised the barber to call the base's emergency medical staff, who arrived 20 to 30
3 minutes after the incident occurred. Rivera claims that he suffered acute pain and intense headaches
4 for several weeks after the incident and was unable to sleep on the side of the affected area. He also
5 contends that while recovering from his injury, he was unable to attend to his gravely ill mother.

6 On or about August 29, 2008, Rivera served an extra-judicial demand on Charles Reed,
7 president and sole shareholder of The Heirloom Et Boutique PR, Inc. ("HEBPR")¹ (at the time
8 addressed as the Beauty Salon/Barber Shop at Ft. Buchanan). On September 29, 2008, Rivera
9 received a letter from Mr. Hiram Pagan, Claims Supervisor for co-defendant Integrand Insurance,
10 informing Rivera that the claim was not covered under the insurance policy issued in favor of
11 Charles Reed. Following this response, the plaintiffs filed this action against both defendants
12 demanding damages for the injuries sustained on June 11.

13 **III. Discussion**

14 In his motion for summary judgment, Reed contends that he can not be held personally liable
15 under Article 1803 for the actions of Mark Colletti, as he is not Coletti's employer. Instead Reed
16 avers that Mark Colletti was employed by HEBPR at the time of the accident, and thus Reed is
17 shielded from personal liability. In response, Rivera contends that while Colletti was in fact
18 employed by HEBPR at the time of the accident, this entity should not provide a liability shield for
19 Reed, as plaintiff alleges Reed's misuse of the corporate form should compel the court to pierce the
20 corporate veil. He further characterizes Reed's misuse of the corporate form as constituting a
21 corporate shell allowing Reed to conduct business in Puerto Rico under the guise of a local provider.

22 "Under Puerto Rico law, there is a presumption that a corporate entity is separate from its
23 controlling entity." Milan v. Centennial Communications Corp., 500 F. Supp. 2d 14, 26 (citing
24 Fleming v. Toa Alta Development Corp., 96 D.P.R. 240, 243 (1968)). However, a plaintiff may
25 pierce this corporate veil by presenting evidence showing that "the corporation is being used to

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27 ¹ HEBPR is a duly organized corporation operating under the laws of the Commonwealth
28 of Puerto Rico.

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2 sanction fraud, provide injustice, evade obligations, defeat public policy, justify inequity, protect
3 fraud or defend crime.” Colon v. Rinaldi, 2006 WL 3421862 at *6 (D.P.R. 2006). This court has
4 recognized a number of factors identified by the First Circuit that must be assessed in considering
5 whether there has been corporate misuse: (1) whether there has been inadequate capitalization in
6 light of the purposes for which the corporation was organized; (2) extensive or pervasive control by
7 the shareholder or shareholders; (3) intermingling of the corporation's properties or accounts with
8 those of its owner; (4) a failure to observe corporate formalities and separateness; (5) siphoning of
9 funds from the corporation; (6) an absence of corporate records; and (7) non-functioning officers or
10 directors. Velasquez v. P.D.I. Enterprises, Inc., 141 F. Supp. 2d 189, 193 (D.P.R. 1999) (citing Town
11 of Brookline v. Gorsuch, 667 F.2d 215, 221 (1st Cir. 1981)). Furthermore, the Puerto Rico Supreme
12 Court has adopted a similar analysis in holding that “a corporation is the alter ego or business
13 conduit of its stockholders when there is such unity of interest and ownership that . . . the
14 corporation actually is not a separate and independent entity.” D.A.C.O v. Alturas Fl. Dev. Corp.,
15 132 D.P.R. 905 (1993).

16 The following evidence is provided in support of the plaintiffs’ contention that Reed has
17 disregarded corporate formalities and therefore should not be granted protection from personal
18 liability: (1) Reed is the president and sole shareholder of HEBPR and oversees the corporation’s
19 financial and administrative affairs; (2) when HEBPR solicited the Army and Air Force Exchange
20 Service (“AAFES”) contract, HEBPR certified that it was a corporation chartered in the state of
21 Washington²; (3) all of the official documents from HEBPR (e.g., tax filings, payroll documents)
22 identify its business address as 14609 138th Ave. East, Puyallup, WA 98374, which is the same
23 address that Reed has identified as his home address; (4) the insurance policy was issued and
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26 ² Defendant’s reply brief (Docket No. 91-2) addresses the issue created by this inconsistency.
27 The reply contends that at the time of the solicitation, HEBPR had not yet been incorporated.
28 Therefore Reed used the name of his corporation which was formed in Washington to solicit the
opening of the barber shop.

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2 annually renewed in the name of Charles Reed and not HEBPR; (5) Reed, a Washington state
3 citizen, is listed as the requisite resident agent for HEBPR. See P.R. Laws Ann. tit 14, § 2682(a)
4 (requiring that “[e]very corporation . . . maintain a residing agent in the Commonwealth. . .”).

5 In viewing this evidence in the light most favorable to the plaintiffs as the non-moving party,
6 the court finds that plaintiffs have created a triable issue of material fact as to whether Reed’s alleged
7 misuse of the corporate entity should lead to the piercing of its corporate veil. Although the
8 plaintiffs have not demonstrated evidence of every factor considered by the court when analyzing
9 a claim of alter-ego, this court has recognized that “[n]o one of these factors is either necessary or
10 sufficient to disregard corporate structure.” Velasquez, 141 F. Supp. 2d at 193. As this
11 determination requires an extremely fact-sensitive analysis, it is a question best suited for a jury. See
12 Crane v. Green & Freedman Baking Co., Inc., 134 F.3d 17, 22 (1st Cir. 1998) (recognizing that
13 federal courts have held that veil-piercing is the sort of determination usually made by a jury because
14 it is so fact specific and holding that, as a matter of federal procedure in diversity cases, the issue of
15 corporate entity disregard is one for the jury (citing Wm. Passalacqua Builders, Inc. v. Resnick
16 Developers S., Inc., 933 F.2d 131, 137 (2d Cir. 1991); FMC Finance Corp. v. Murphree, 632 F.2d
17 413, 421 & n. 5 (5th Cir.1980))).

18 Therefore, as the plaintiffs have created a material issue of fact with regard to Reed’s alleged
19 misuse of the corporate structure, the court **DENIES** defendant Reed’s motion for summary
20 judgment.

21 **SO ORDERED**

22 In San Juan, Puerto Rico this 22nd day of February, 2010.

23
24 *S/Gustavo A. Gelpí*

25 GUSTAVO A. GELPÍ

26 United States District Judge
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